

## UNITED STATES GOVERNMENT

## NATIONAL LABOR RELATIONS BOARD

## FREEDOM OF INFORMATION ACT BRANCH

Washington, D.C. 20570

## Via email

February 21, 2023

Re: FOIA Request NLRB-2023-000816

Dear Mr. Chris Van Buskir (MassLive):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on February 15, 2023, in which you seek all documents pertaining to *UNITE HERE LOCAL 26 (Encore Boston Harbor)*, Case No. 01-CB-306677, including the signed charge against the union and initial letters to the charging and charged parties and the employer. You assumed financial responsibility for the processing of your request in the amount of \$1.00.

We acknowledged your request on February 15, 2023.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, NxGen, I have confirmed that the requested case is recently filed, open case being investigated by the Agency's Region 1 office. As such, I have determined that certain case file records responsive to your request are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 236 (1978). Therefore, given the open status of the requested case, now pending investigation in the Region, any investigatory records in the case file is, and will continue to be, withheld in full pursuant to Exemption 7(A) while the case remain open.

Your request is granted to the extent that I have attached the formal records in the case, which are available to the public pursuant to NLRB FOIA regulations, regardless of the open/closed status of the case. The formal records at this time include the records you requested: the charge and the initial docketing letters to the charged and charging parties, and letter to the employer. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which

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would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is "temporal in nature." *Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of the case can be tracked on the Agency website at <a href="www.nlrb.gov">www.nlrb.gov</a> by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <a href="https://www.nlrb.gov/case/01-CB-306677">https://www.nlrb.gov/case/01-CB-306677</a>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person "actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nlrb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison National Labor Relations Board 1015 Half Street, S.E., 4<sup>th</sup> Floor Washington, D.C. 20570 Email: FOIAPublicLiaison@nlrb.gov

Telephone: (202) 273-0902 Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records

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Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road-OGIS College Park, Maryland 20740-6001 Email: ogis@nara.gov

Telephone: (202) 741-5770 Toll free: (877) 684-6448 Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: https://foiaonline.gov/foiaonline/action/public/home or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer National Labor Relations Board 1015 Half Street, S.E., 4<sup>th</sup> Floor Washington, D.C. 20570 Email: DLCFOIAAppeal@nlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of

the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

Isl Synta E. Keeling

Synta E. Keeling FOIA Officer

Attachment: (13 pages)